IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 13TH NOVEMBER 2007 / 22ND KARTHIKA 1929

WP(C).No. 27121 of 2007(D)

PETITIONER:

JOSE, S/O.ACHUNNI,
PADINJARETHALA ANGADI, PARAVATTANI, THRISSUR.

BY ADV. SRI.JIJO PAUL

RESPONDENTS:
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1. **THE SOUTH INDIAN BANK LTD.,**
   REGIONAL OFFICE, THRISSUR, REPRESENTED BY
   IT'S REGIONAL MANAGER.

2. **THE RECOVERY OFFICER,**
   DEBTS RECOVERY TRIBUNAL ERNAKULAM,
   8TH FLOOR, K.S.H.B. BUILDING, PANAMPILLY NAGAR,
   COCHIN-36.

3. **C.K.GEETHA, D/O.CHITHIRANJAN,**
   KAMBAVAN, ATHIRA, PALLATH LANE,
   THRISSUR-5.

BY ADV. SRI.P.A.AUGUSTINE(AREEKATTEL)
SRI.K.PRABHAKARAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.27121/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE NOTICE ISSUED BY THE 2ND RESPONDENT FOR APPEARANCE IN THE PROCEEDINGS FOR SETTLING SALE PROCLAMATION.

EXT.P2:- COPY OF THE INTIMATION LETTER INFORMING THE DEATH OF J.K.ANTONY DT. 22.9.2000.

EXT.P3:- COPY OF THE COUNTER FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT IN D.R.C. 1128/SIB/TSR DT. 18.4.07.

EXT.P4:- COPY OF THE REPLY DT. 4.5.07 FILED BY THE CERTIFICATE HOLDER BANK, THE IST RESPONDENT.

EXT.P5:- COPY OF THE ORDER DT. 12.6.07 OF THE 2ND RESPONDENT IN DRC NO.1128 IN OA. 48/2000.

EXT.P6:- COPY OF THE RECEIPT DT. 27.3.02 FOR AN AMOUNT OF RS. 1,73,441/- EVIDENCING PAYMENT MADE BY THE PETITIONER.

EXT.P7:- COPY OF THE ORDER OF THE DRT. ERNAKULAM DT. 19.9.03 IN OA. NO.42/2000.

/TRUE COPY/

P.A. TO JUDGE

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THOTTATHIL B. RADHAKRISHNAN, J.

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WP(C).No.27121 of 2007-D

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Dated this the 13th day of November, 2007.

JUDGMENT

1. The short issue on which the petitioner challenges Ext.P5 order of the Recovery Officer, without taking recourse to proceedings before the Debts Recovery Tribunal against it, is that according to him, Ext.P8 final order of the DRT and further proceedings are void in as much as the second defendant died on 22-9-2000, after the institution of the O.A.42/2000 and that his estate was not represented. The petitioner claims to be the son of one of the sisters of the second defendant who, it is stated, died issue-less and unmarried.

2. The stand of the auction purchaser that the first defendant is also the son of another sister of the second

defendant, is not disputed by the petitioner even at the time of hearing. Under such circumstances, I am inclined to take the view that the plea of the auction purchaser in whose favour there is a finding that the estate of the second defendant was substantially represented by the first defendant, who is none other than the one among the defendants in the original proceedings, is sustainable.

3. Having regard to the aforesaid, I find no jurisdictional error or infirmity in the impugned order. The writ petition is without any merit. The same is accordingly dismissed.

4. At this point of time, the learned counsel for the petitioner requests that the petitioner may be given a short time to vacate the premises since he is residing there. The auction purchaser states that the building is a dilapidated one and the writ petitioner is not residing in the building. If the petitioner files an affidavit before the Recovery Officer unconditionally undertaking to vacate on or before

20th of December, 2007 and remits an amount of Rs.5,000/- towards occupation charges, within ten days, the petitioner will be permitted to continue in possession until then. The Recovery Officer is directed to slate the date for dispossession on the 21st December, 2007. The aforesaid amount of Rs.5,000/- will be released to the auction purchaser.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/